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231206Z Feb 05

ACTION AF-00

INFO	LOG-00	NP-00	AID-00	AMAD-00	CIAE-00	INL-00	DODE-00
	DS-00	EB-00	UTED-00	VC-00	H-00	TEDE-00	INR-00
	IO-00	L-00	VCE-00	NSAE-00	OIC-00	PA-00	GIWI-00
	PRS-00	P-00	SP-00	STR-00	TRSE-00	FMP-00	R-00
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FM AMEMBASSY GABORONE
TO SECSTATE WASHDC 1752
INFO SOUTHERN AFRICAN DEVELOPMENT COMMUNITY
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NSC WASHDC

UNCLAS GABORONE 000266

SIPDIS

SENSITIVE BUT UNCLASSIFIED

AF/S FOR DIFFILY

E.O. 12958: N/A
TAGS: [PHUM](#) [PGOV](#) [BC](#)
SUBJECT: HEARINGS BEGIN ON BOTSWANA'S DEPORTATION OF
CRITICAL ACADEMIC

REF (A) Gaborone 257 REF (B) 04 Gaborone 1950 REF (C)

Gaborone 56

1. (U) Summary: Preliminary arguments in the case of Kenneth Good v. the Attorney General commenced before a packed chamber at the High Court on February 22. Debate centered on whether the court has the right to issue an interdict against a state order as it did on February 19 to forestall Good's deportation. Judge Sappire indicated that the law may well limit the court's power in this regard, but stated that if so, the constitutionality of such a law is open to question. Further hearings are postponed until February 24 so the applicants can prepare their arguments against state counsel. This case fuels ongoing discussion of the (im)balance of powers and its impact on democracy in Botswana. Post will attend Prof. Good's seminar at the University of Botswana afternoon of February 23. British and Australian High Commissioners are preparing to demarche the GOB February 25 or March 1, as Good is apparently a dual citizen. End Summary.

PRELIMINARY ARGUMENTS TOUCH ON BALANCE OF POWERS

2. (U) Hearings in the urgent application for relief filed by the attorneys representing Professor Kenneth Good began at the High Court on February 22 (Ref A). Representatives of the Attorney General urged the judge to dismiss the case, arguing that the court acted outside its authority by issuing an interdict on February 19. When asked by the judge how else the status quo could be maintained until the case is heard and decided, the Attorney General denied that the status quo should be maintained. Professor Good should leave the country and pursue legal action through his attorneys from abroad, they argued. Although Judge Sappire confessed not to be "impressed" with this reasoning, he conceded that the law cited by the respondent might indeed prevent the court from issuing an interdict against an order by the state.

3. (U) The counsel for Prof. Good argued that the court does have the right to stay the execution of a state order when an applicant urgently seeks temporary relief for purposes of challenging that order in court. If that were not so, the attorneys argued, the law effectively would deny the applicant access to justice. The judge noted that were Prof. Good forced to leave the country and pursue his case from abroad and won the case, irreparable damage would have occurred in the interim in the form of the loss of his job, home, etc. He reserved judgment on whether or not the court has the power to issue an interdict in such a situation but stated that even if the law prohibits such an action by the court, the applicants could challenge the constitutionality of that law.

4. (U) The court adjourned until 0830 on February 23, when the parties would continue their preliminary arguments. By 0900, counsel for the applicant had been successful in obtaining a day's worth of adjournment, arguing that the state had not notified them of its intended arguments in advance, and asked for a postponement to prepare. The judge consented, and further hearings were adjourned until 0830

February 24. This would allow Prof. Good to deliver his seminar paper thought to have helped provoke the order (ref A).

CASE DRAWS LARGE, SUPPORTIVE CROWD

15. (U) The hearing on February 22 attracted such a large crowd that the court had to relocate the proceedings to a larger venue to accommodate the onlookers. Two buses full of students and faculty from the University of Botswana traveled from Gaborone to Lobatse (about one hour's drive) to witness the case after presenting the acting Vice Chancellor of the University with a letter protesting the deportation order. Politicians from the three largest parties - the ruling Botswana Democratic Party and the opposition Botswana National Front and Botswana Congress Party - attended, as well as representatives of the Botswana Center for Human Rights. Prof. Good entered the courtroom to the applause of an overwhelmingly supportive audience.

COMMENT

16. (SBU) By ordering the deportation of Prof. Good, the GOB has drawn far more attention to his criticisms of it than Good could ever have expected to attract had he continued presenting his arguments in relatively limited academic fora. Indeed, taking this step supports Good's contention that beneath the veneer of a democratic state, the GOB is authoritarian and intolerant of dissent. Considering the GOB's track-record of (mis)handling the Central Kalahari Game Reserve relocation issue, the Government is unlikely to back down or change course.

17. (SBU) The procedural and substantive aspects of this case concern an issue already at the forefront of public discourse in Botswana today - that of the broad powers of the executive, relative to the other branches of government. Last week, opposition MP Dumelang Saleshando reintroduced in parliament a motion calling for the national assembly to debate the Government's decision to locate a second university in Serowe-Palapye contrary to the recommendation of an advisory committee (Ref B). The original motion was shot down on the assertion that parliament has no right to revisit a decision of the government. A business source told us February 22 that government circles discussed the issue of deporting Prof. Good early the week of February 14. Kenneth Good v. the Attorney General brings into question the balance of power between the judiciary and the state and the extent to which the state can use its powers to curtail freedom of expression. Prof. Good's presentation of his paper to the U/Botswana seminar series afternoon of February 23, which post will attend, will further test the limits of freedom of expression.

18. (SBU) This episode also does not bode well for VP Khama's image. Given the reservations of many about his human rights views (Ref C), public opinion is already blaming the deportation order on him as much as on President Mogae although only the President can officially declare someone a prohibited immigrant.

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